HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

WRIT PETITION No.19537 OF 2001

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Between:

Mr.P.Swamy and 15 others

……Petitioners

And

The Chairman & Managing Director,
A.P. Transmission Corporation Ltd.,
Vidutsoudha, Somajiguda,
Hyderabad and eleven others

……Respondents

:: ORDER ::

Counsel for the Petitioners : Shri K.Joseph

Counsel for the Respondents : Smt. Saraswathi

Dated: 24-10-2006

Petitioners Shri P.Swamy, Shri R.Rajeer, Smt. Waheed Bee, Shri B.Ramakrishna, Smt. Karimunnisa, Smt. Chand Bee,
Smt. Habbeb Bee, Shri A.Muttaiah, Shri Mirza Rahmathulla Baig, Shri D. Pullaih, Shri P.Narsaiah, Shri Syed Khaja,
Shri B.Laxmaiah, Shri B.Mysaiah, Shri M.A.Sattar and Shri Yakoob Ali, who retired from the services of the Andhra Pradesh State Electricity Board (for short, 'the Board') on 31-10-1986,
31-08-1991, 31-05-1993, 30-04-1997, 30-06-1987, 30-06-1989, 30-06-1989, 30-06-1990, 30-06-1990, 30-06-1990, 30-06-1991, 30-06-1992, 30-06-1992, 30-06-1993, 30-06-1994 and
31-01-1997, respectively have jointly filed this petition for grant of declaration that they are entitled to continue in service up to the age of 60 years and get consequential benefits.

A perusal of the pleadings of the parties shows that some of the petitioners joined the service of the Government of Andhra Pradesh before creation of the Board in 1958. Later on, they opted for the services of the Board. Some others were directly appointed in the services of the Board on different posts. All of them were retired at the age of 58 years in terms of Regulation 16 of the Andhra Pradesh State Electricity Board Service Regulations framed by the Board in exercise of its power under Section 79 (c) of the Electricity (Supply) Act, 1948 (for short, 'the Act').

The petitioners have questioned their retirement at the age of 58 years by contending that they fall in the category of workmen and as such, they are entitled to continue in the service up to the age of 60 years. According to them, their service conditions are not governed by the regulations framed under Section 79 (c) of the Act. They have also relied on some administrative instructions issued by the Board for categorization of the employees as workmen and non-workmen and averred that they should have been treated at par with workmen

employees of the State Government and allowed to continue in service up to the age of 60 years.

In the counter filed on behalf of the respondents by Shri P.Jesudas, Assistant Secretary (Legal) of the Board, it has been averred that all the petitioners were retired on attaining the age of 58 years because the regulations do not make any distinction between the workmen employees and non-workmen employees.

I have heard learned counsel for the parties. The question whether workmen employees are entitled to continue in the service of the Board up to the age of 60 years was recently considered in Writ Petition No.19036 of 1997, **B.Thomas Vs. The Divisional Electrical Engineer, APSEB, Operation – Town, PWD Grounds, Vijayawada and others** and batch. After noticing the provisions of Section 79 (c) of the Act and Clauses 2 and 16 of Part I of the Regulations, the Court held as under:

> "A conjoint reading of the above reproduced clauses of the Regulations makes it clear that the provisions contained in Part I of the Regulations are applicable to all monthly paid (regular time scale) employees of the Government of Andhra Pradesh who opted for the services of the Board and those who were recruited in the services of the Board on or after 1-4-1959. This means that Clause 16 of Part I of the Regulations, which govern the age of retirement, is applicable to all the employees. The only exception contained in sub-clause (1) of Clause 16 relates to Class IV employees, whose age of superannuation has been fixed as 60 years. Sub-clause (2) of Clause 16 relates to non-workmen employees who attained the age of 55 years after August 02, 1984. It declares that those employees will not retire on August 31, 1984, but will continue in service up to the age of 58 years. This sub-clause appears to have been subsequently added in the backdrop of the vacillating decisions taken by the State Government in 1984, first to reduce the age of retirement of the employees from

58 years to 55 years and then restore the status quo ante. However, the same does not have any bearing on the petitioners' case, who are governed by Clause 16 (1) of the Regulations.

The argument of Shri P.V. Ramana that the provisions contained in Part I of the Regulations are not applicable to the employees who fall in the category of workmen is not supported by the plain language of the Regulations and I do not see any reason to interpret the Regulations in a manner which would amount to re-writing of Clauses 2 and 16 thereof. The power to legislate is the exclusive prerogative of the competent legislature. Likewise, the power to enact subordinate legislation or make delegated legislation is the exclusive preserve on the authority upon whom such power is conferred by the competent legislature. Therefore, it is not open to or permissible for this Court to use the power of judicial review for the purpose of legislation. Any such attempt would amount to unwarranted encroachment on the jurisdiction of the legislature or the authority upon whom power is conferred to make subordinate/delegated legislation.

There is another reason for not accepting the plea of the petitioners that being members of Operation Subordinate Services and workmen, they are entitled to continue in service up to the age of 60 years. A number of other employees who are not members of Operation Subordinate Services and who have been categorized in the Schedules appended to the Regulations also fall in the definition of 'workman'. There is no dispute that such employees are governed by Clause 16 of the Regulations. If the plea of the petitioners is accepted, then it would lead to incongruous and anomalous results inasmuch as there will be two classes among the employees who fall within the definition of 'workman'. Therefore, keeping in view the settled law that the Court should avoid interpretation of a statute which leads to anomalous results or creates discrimination among similarly situated persons, I have no hesitation to

reject this contention of the petitioners.

The plea of the petitioners that they are entitled to be treated at par with the employees of the government, who fall within the definition of 'workman' under Section 2 (s) of the 1947 Act and the failure of the Board to continue them in service up to the age of 60 years has resulted in discrimination and violation of their fundamental right to equality is wholly misconceived and is liable to be rejected. In the first place, it is to be noted that the petitioners have not produced any material to show that all government employees who fall within the definition of 'workman' retire at the age of 60 years. Secondly, even if that be so, the petitioners cannot claim parity with the government employees because the two sets of employees are employed under different employers and their service conditions are regulated by different sets of statutory provisions. While the government employees hold civil posts under the State and their conditions of service are regulated by the law enacted by the competent legislature or the rules framed under proviso to Article 309 of the Constitution, the employees of the Board do not hold civil posts and their service conditions are governed by the Regulations framed under Section 79 (c) of the 1948 Act, which are in the nature of subordinate legislation."

The Court rejected the plea of the petitioners that in terms of the provisions contained in the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984, they are entitled to continue in service up to the age of 60 years by recording the following observations:

"The provisions contained in the Andhra Pradesh Public Employment (Regulation of Age of Superannuation) Act, 1984 (for short, 'the 1984 Act') to which reference has been made in the affidavit of the petitioner – B. Thomas in support of his claim for being continued in service up to the age of 60 years are not available to the petitioners because the same are

applicable only to government employees and not to the employees of the Board whose service conditions are governed by the Regulations framed under Section 79 (c) of the 1948 Act."

By applying the ratio of the aforementioned order to this case, I hold that the competent authority did not commit any illegality by retiring the petitioners at the age of 58 years and the writ petition is liable to be dismissed. Ordered accordingly.

As a sequel to dismissal of the writ petition, WPMP No.24621 of 2001 filed by the petitioners for fixing an early date for hearing of the writ petition is disposed of as infructuous.

G.S. SINGHVI, CJ

24-10-2006
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